



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/881,523	06/14/2001	Christopher Allin Kitze	2121P	8134

27820 7590 02/27/2006

WITHROW & TERRANOVA, P.L.L.C.  
P.O. BOX 1287  
CARY, NC 27512

EXAMINER

DASS, HARISH T

ART UNIT PAPER NUMBER

3628

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/881,523

Applicant(s)

KITZE, CHRISTOPHER ALLIN

Examiner

Harish T. Dass

Art Unit

3628

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12/08/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-3, 10-12, 19, 26 and 45-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson et al (hereinafter Johnson – US 6,167,124) in view of Carlton-Foss (US 6,647,373).**

Re. Claims 1 and 45-46, Johnson discloses (a) when a digital file (files – voice, video, etc) is to be transferred over the network from a sending node to a receiving node, allowing other nodes to submit bids to transport the file over the network for a particular price [Abstract; C2 L45 to C3 L26; C3 L46-L65; C20 L30-L44];

and

(b) allowing the node with a lowest bid to transport to file to the receiving node, thereby optimizing network traffic based on economics [C1 L25 to C2 L44; C18 L30 to C19 L4 – see manager keeps track of each carrier's charge ... "least cost routing"] and wide area network [C3 L25]. Johnson does not explicitly disclose peer-to-peer network. However, Carlton-Foss discloses peer-to-peer network [Abstract; C2 L52-L6-; C3 L9-L45] to securely submit and receive bids electronically from plurality proposers (bidder).

Art Unit: 3628

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Johnson and include peer-to-peer network, as disclosed by Carlton-Foss, to allow the bidder to submit/transmit data across network using peer-to-peer network securely.

Re. Claim 2, Johnson discloses paying a user of the transporting node the particular price [C20 L4-L29].

Re. Claim 3, Johnson discloses including the step of billing a user of the sending node [C22 L25-65].

Re. Claim 10, peer-to-peer network claim 10 is substantially similar to claim 1 and therefore rejected with same rational as claim 1.

Re. Claim 11, peer-to-peer network claim 11 is substantially similar to claim 2 and therefore rejected with same rational as claim 2.

Re. Claim 12, peer-to-peer network claim 12 is substantially similar to claim 3 and therefore rejected with same rational as claim 3.

Re. Claim 19, Johnson discloses (b) when a digital file is to be transferred over the network from a sending node to a receiving node, allowing other nodes to submit bids to

Art Unit: 3628

transport the file over the network for a particular price [C2 L45 to C3 L26; C3 L46-L65; C20 L30-L44];

(c) allowing the node with a lowest bid to transport to file to the receiving node [C1 L25 to C2 L44; C18 L30 to C19 L4]; and

(d) billing a user account of the sending node, and paying a user of the transporting node the particular price [C20 L30-L43; C22 L25-65], thereby optimizing network traffic based on economics (efficient, switch network, least costly) [C2 L25-L38; C15 L48-L56; C22 L25-65 – see manager keeps track of each carrier's charge ... "least cost routing"].

Johnson does not explicitly disclose (a) providing a peer-to-peer network that includes at least one server node and multiple client nodes. However, Carlton-Foss discloses this feature [C3 L9-L45; C7 L5-L31] to securely submit and receive bids electronically from plurality proposers (bidder). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the disclosure of Johnson and include peer-to-peer network, as disclosed by Carlton-Foss, to allow the bidder to submit/transmit data across network using peer-to-peer network securely.

Re. Claim 26, peer-to-peer network claim 26 is substantially similar to claim 19 and therefore rejected with same rational as claim 19.

**Claims 4-9, 13-18, 20-25, 27-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson and Carlton-Foss, as applied to claims 1, 10, 19 and 26 above, and further in view of Odlyzko (US 6295,294).**

Re. Claims 4-9, Johnson discloses submitting bids for different types of communication system, requiring the submitted bids to include price and a quality of service (service type) [C16 L1-L13; C19 L45 to C20 L43]. Carlton-Foss further discloses sending the file peer-to-peer [C3 L9-L45] to securely submit and receive bids electronically from plurality proposers. Johnson or Carlton-Foss does not explicitly disclose allowing the sender to specify a particular quality of service for delivery of the file, the quality of service including immediate delivery and scheduled delivery, setting the price to transport the file based on the quality of service specified, if the specified quality of service is immediate delivery, if the specified quality of service is immediate delivery and the receiving node is off-line, uploading the file from the sending node to the server node, and delivering the file from the server node when receiving node comes online, and if the specified quality of service is scheduled delivery, then queuing file transmission until a scheduled time. However, Odlyzko (US 6295,294) discloses these features [see entire document particularly, Abstract; C5 L16-L56; C6 L7-L35; C7 L42-L58; C9 L11-L43] to allow the user to select a service (channel) from plurality of services (channels). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosure of Johnson, Carlton-Foss and Odlyzko to allowing a user to specify different channels for different types of communications for obtaining a

Art Unit: 3628

high quality of service when needed for transmitting electronic files (such as news downloads).

Re. Claims 13-18, peer-to-peer network claims 13-18 are substantially similar to claim 4-9 and therefore, they are rejected with same rational as claims 4-9.

Re. Claims 20-25, Johnson discloses submitting bids for different types of communication system, requiring the submitted bids to include price and a quality of service (service type) [C16 L1-L13; C19 L45 to C20 L43]. Johnson or Carlton-Foss does not explicitly disclose allowing the sender to specify a particular quality of service for delivery of the file, the quality of service including immediate delivery and scheduled delivery, including step of setting the price to transport the file based on the quality of service specified, if the specified quality of service is immediate delivery, then sending the file peer-to-peer, if the specified quality of service is immediate delivery and the receiving node is off-line, uploading the file from the sending node to the server node, and delivering the file from the server node when receiving node comes online, and if the specified quality of service is scheduled delivery, then queuing file transmission until a scheduled time. However, Odlyzko (US 6295,294) discloses these features [see entire document particularly, Abstract; C5 L16-L56; C6 L7-L35; C7 L42-L58; C9 L11-L43] to allow the user to select a service (channel) form plurality of services (channels). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosure of Johnson, Carlton-Foss and Odlyzko to allowing a

Art Unit: 3628

user to specify different channels for different types of communications for obtaining a high quality of service when needed for transmitting electronic files (such as news downloads).

Re. Claims 27-32, peer-to-peer network claims 27-32 are substantially similar to claim 20-25 and therefore, they are rejected with same rational as claims 20-25.

**Claims 33-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson in view of Odlyzko and Barzilai et al (hereinafter Barzilai – US 6,012,045).**

Re. Claim 33, Johnson discloses (c) in response to the user publishing one or more files, prompting the user to select a quality of service for file delivery [C3 L47-L55 – see distribute]; (g) comparing the received bids and choosing the node that submitted a lowest price to transport the file [C18 L30-L67; C20 L4-L29]; and (f) accepting bids to transport the file from other nodes [Abstract]. Johnson does not explicitly disclose

(a) allowing a user to become a member of the network by installing and executing copy of a peer-to-peer client application on the user's computer [Abstract; C2 L20-L66]; (b) receiving registration information entered by the user, and generating a user account [C4 L11-L40; C5 L7 to C3 L37];

(d) calculating a total fee to charge the user for delivery of the file and automatically billing the user's account [Barzilai – C1 L30-L45; C6 L27-L37];

(e) offering delivery of the file up for bidding from a central location; and



Art Unit: 3628

(h) paying a user of the transporting node, thereby allowing the user of the transporting node to generate extra revenue and optimizing network traffic based on economics.

However, Odlyzko discloses (e) offering delivery of the file up for bidding from a central location [Odlyzko - C5 L16-L56; C6 L7-L35; C7 L42-L58; C9 L11-L43] to allow user to submit bids for delivery of the file (data) based on the quality of service.

Barzilai disclosed (a) allowing a user to become a member of the network by installing and executing copy of a peer-to-peer client application on the user's computer [Abstract; C2 L20-L66]; (b) receiving registration information entered by the user, and generating a user account [C4 L11-L40; C5 L7 to C3 L37], and

(d) calculating a total fee to charge the user for delivery of the file and automatically billing the user's account [Barzilai – C1 L30-L45; C6 L27-L37] to establish a virtual showroom where customers have to be member to participate in bidding. Further, (h) paying a user of the transporting node, thereby allowing the user of the transporting node to generate extra revenue and optimizing network traffic based on economics is well known (payment to auctioneer to compensate for services is known and inherent part of Barzilai disclosure. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to combine the disclosure of Johnson, Odlyzko and Barzilia to allowing a paying members to submit bids for different channels for different types of communications for obtaining a high quality of service when needed for transmitting electronic files

Art Unit: 3628

Re. Claims 34-35, Barzilai further discloses generating a digital certificate for the user that includes a public key and a private key (see encryption), storing the user's account information and the user's public key and private key in at least one database accessible by a server node [C6 L50-L57; C7 L60 to C8 L33 – see encryption].

Re. Claim 36, Johnson discloses publishing the file by making the file publicly available on the network for searching by other client nodes by adding the file to a searchable index of shared files on the server node [C18 L30-L67; C20 L4-L29].

Re. Claims 37-38, Johnson does not explicitly disclose publishing the file for direct file transfer and showing the user a fee charged for each level of quality of service.

However, file transfer protocol is well known to transfer files from one computer to another directly either in binary format or file format and similarly showing the user a fee charged for each level of quality of service is well known to allow the user to check his bill statement and charge rate (For example, customer checks his/her phone bill for different charges, Internet, cable, long distance, local, operator assistance, etc).

Re. Claim 39, Barzilai further discloses digitally signing the file and storing the digital signature on the server node for file authentication [C7 L60 to C8 L33].

Re. Claim 40, neither Johnson nor Odlyzko or Barzilia disclose uploading a copy of the file to the server node so that when the recipient node is off-line at the time the file is to

be delivered, the server node can deliver the file when recipient node comes back on-line. However, this is well known to one skill in the art to keep a copy of the file in server for later delivery (for example, an email is delivered when the recipient logs in to the email server and reads his/her email).

Re. Claim 41-44, Barizilia further discloses member account activity and webpage [Figures 2, 7; C5 L7-L40]. Neither Johnson nor Odlyzko or Barzilia disclose providing the offer as an entry on a web page that includes a name and size of the file, a chosen quality of service, a location of the recipient, and a bid submission time limit, identifying in the bid the bidding node, and a predetermined price and a quality of service for delivering the file, choosing the bid that has the lowest price and that matches the quality of service in the offer, and providing the node that submitted the chosen bid with information necessary to transport the file across the network. However, these features are well known to electronic auction site where the site provides all the information on auction web page (For example, eBay, shows the bids, price, item auctioned, and customer account, etc.)

### ***Response to Arguments***

2. Applicant's arguments with respect to pending claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harish T. Dass whose telephone number is 571-272-6793. The examiner can normally be reached on 8:00 AM to 4:50 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung S. Sough can be reached on 571-272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3628

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Harish T Dass  
Examiner  
Art Unit 3628

2/21/06



NGA NGUYEN  
PRIMARY EXAMINER

Art Unit 3628